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**CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION
OF
XHP MICROSYSTEMS, INC.**

XHP Microsystems, Inc., a Delaware corporation, does hereby certify that the following amendment to the corporation's Restated Certificate of Incorporation has been duly adopted by the corporation's board of directors and stockholders in accordance with the provisions of Section 242 of the Delaware General Corporation Law, with the approval of such amendment by the corporation's stockholders having been given by written consent without a meeting in accordance with Sections 228 and 242 of the Delaware General Corporation Law:

Article I of the corporation's Restated Certificate of Incorporation, relating to the name of the corporation, is amended to read in its entirety as follows:

"ARTICLE I

The name of the corporation is Miradia Inc."

IN WITNESS WHEREOF, said corporation has caused this Certificate of Amendment to be signed by its duly authorized officer this 12th day of December, 2003, and the foregoing facts stated herein are true and correct.

XHP Microsystems, Inc.

By: 

Jay Chen, Chief Executive Officer

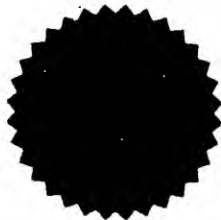
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "XHP MICROSYSTEMS, INC.", CHANGING ITS NAME FROM "XHP MICROSYSTEMS, INC." TO "MIRADIA INC.", FILED IN THIS OFFICE ON THE SEVENTEENTH DAY OF DECEMBER, A.D. 2003, AT 3:28 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

3535700 8100

030814917

AUTHENTICATION: 2830335

DATE: 12-22-03

EMPLOYEE INVENTION ASSIGNMENT AND CONFIDENTIALITY AGREEMENT

In consideration of, and as a condition of my employment with XHP Microsystems, Inc., a Delaware corporation (the "*Company*"), I hereby represent to, and agree with the Company as follows:

1. **Purpose of Agreement.** I understand that the Company is engaged in a continuous program of research, development, production and marketing in connection with its business and that it is critical for the Company to preserve and protect its "*Proprietary Information*" (as defined in Section 7 below), its rights in "*Inventions*" (as defined in Section 2 below) and in all related intellectual property rights. Accordingly, I am entering into this Employee Invention Assignment and Confidentiality Agreement (this "*Agreement*") as a condition of my employment with the Company, whether or not I am expected to create inventions of value for the Company.
2. **Disclosure of Inventions.** I will promptly disclose in confidence to the Company all inventions, improvements, designs, original works of authorship, formulas, processes, compositions of matter, computer software programs, databases, mask works and trade secrets (the "*Inventions*") that I make or conceive or first reduce to practice or create, either alone or jointly with others, during the period of my employment, whether or not in the course of my employment, and whether or not such Inventions are patentable, copyrightable or protectable as trade secrets.
3. **Work for Hire; Assignment of Inventions.** I acknowledge and agree that any copyrightable works prepared by me within the scope of my employment are "works for hire" under the Copyright Act and that the Company will be considered the author and owner of such copyrightable works. I agree that all Inventions that (i) are developed using equipment, supplies, facilities or trade secrets of the Company, (ii) result from work performed by me for the Company, or (iii) relate to the Company's business or current or anticipated research and development (the "*Assigned Inventions*"), will be the sole and exclusive property of the Company and are hereby irrevocably assigned by me to the Company.
4. **Labor Code Section 2870 Notice.** I have been notified and understand that the provisions of Sections 3 and 5 of this Agreement do not apply to any Assigned Invention that qualifies fully under the provisions of Section 2870 of the California Labor Code, which states as follows:

ANY PROVISION IN AN EMPLOYMENT AGREEMENT WHICH PROVIDES THAT AN EMPLOYEE SHALL ASSIGN, OR OFFER TO ASSIGN, ANY OF HIS OR HER RIGHTS IN AN INVENTION TO HIS OR HER EMPLOYER SHALL NOT APPLY TO AN INVENTION THAT THE EMPLOYEE DEVELOPED ENTIRELY ON HIS OR HER OWN TIME WITHOUT USING THE EMPLOYER'S EQUIPMENT, SUPPLIES, FACILITIES, OR TRADE SECRET

INFORMATION EXCEPT FOR THOSE INVENTIONS THAT EITHER: (1) RELATE AT THE TIME OF CONCEPTION OR REDUCTION TO PRACTICE OF THE INVENTION TO THE EMPLOYER'S BUSINESS, OR ACTUAL OR DEMONSTRABLY ANTICIPATED RESEARCH OR DEVELOPMENT OF THE EMPLOYER; OR (2) RESULT FROM ANY WORK PERFORMED BY THE EMPLOYEE FOR THE EMPLOYER. TO THE EXTENT A PROVISION IN AN EMPLOYMENT AGREEMENT PURPORTS TO REQUIRE AN EMPLOYEE TO ASSIGN AN INVENTION OTHERWISE EXCLUDED FROM BEING REQUIRED TO BE ASSIGNED UNDER CALIFORNIA LABOR CODE SECTION 2870(a), THE PROVISION IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS UNENFORCEABLE.

5. **Assignment of Other Rights.** In addition to the foregoing assignment of Assigned Inventions to the Company, I hereby irrevocably transfer and assign to the Company: (i) all worldwide patents, patent applications, copyrights, mask works, trade secrets and other intellectual property rights, including but not limited to rights in databases, in any Assigned Inventions, along with any registrations of or applications to register such rights; and (ii) any and all "Moral Rights" (as defined below) that I may have in or with respect to any Assigned Inventions. I also hereby forever waive and agree never to assert any and all Moral Rights I may have in or with respect to any Assigned Inventions, even after termination of my work on behalf of the Company. "Moral Rights" mean any rights to claim authorship of or credit on an Assigned Inventions, to object to or prevent the modification or destruction of any Assigned Inventions under Section 3, or to withdraw from circulation or control the publication or distribution of any Assigned Inventions under Section 3, and any similar right, existing under judicial or statutory law of any country or subdivision thereof in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

6. **Assistance.** I agree to assist the Company in every proper way to obtain for the Company and enforce patents, copyrights, mask work rights, trade secret rights and other legal protections for the Company's Assigned Inventions in any and all countries. I will execute any documents that the Company may reasonably request for use in obtaining or enforcing such patents, copyrights, mask work rights, trade secrets and other legal protections. My obligations under this paragraph will continue beyond the termination of my employment with the Company, provided that the Company will compensate me at a reasonable rate after such termination for time or expenses actually spent by me at the Company's request on such assistance. I appoint the Secretary of the Company as my attorney-in-fact to execute documents on my behalf for this purpose.

7. **Proprietary Information.** I understand that my employment by the Company creates a relationship of confidence and trust with respect to any information of a confidential or secret nature that may be disclosed to me by the Company that relates to the business of the Company or to the business of any parent, subsidiary, affiliate, customer or supplier of the Company or any other party with whom the Company agrees to hold information of such party in confidence (the "Proprietary Information"). Such Proprietary Information includes, but is not

limited to, Assigned Inventions, marketing plans, product plans, business strategies, financial information, forecasts, personnel information, customer lists and data, and domain names.

8. **Confidentiality.** At all times, both during my employment and after its termination, I will keep and hold all such Proprietary Information in strict confidence and trust. I will not use or disclose any Proprietary Information without the prior written consent of the Company, except as may be necessary to perform my duties as an employee of the Company for the benefit of the Company. Upon termination of my employment with the Company, I will promptly deliver to the Company all documents and materials of any nature pertaining to my work with the Company and, upon Company request, will execute a document confirming my agreement to honor my responsibilities contained in this Agreement. I will not take with me or retain any documents or materials or copies thereof containing any Proprietary Information.

9. **No Breach of Prior Agreement.** I represent that my performance of all the terms of this Agreement and my duties as an employee of the Company will not breach any invention assignment, proprietary information, confidentiality or similar agreement with any former employer or other party. I represent that I will not bring with me to the Company or use in the performance of my duties for the Company any documents or materials or intangibles of a former employer or third party that are not generally available to the public or have not been legally transferred to the Company.

10. **Efforts; Duty Not to Compete.** I understand that my employment with the Company requires my undivided attention and effort during normal business hours. While I am employed by the Company, I will not, without the Company's express prior written consent, provide services to, or assist in any manner, any business or third party which competes with the current or planned business of the Company.

11. **Notification.** I hereby authorize the Company to notify my actual or future employers of the terms of this Agreement and my responsibilities hereunder.

12. **Non-Solicitation of Employees/Consultants.** During my employment with the Company and for a period of one (1) year thereafter, I will not directly or indirectly solicit away employees or consultants of the Company for my own benefit or for the benefit of any other person or entity.

13. **Non-Solicitation of Suppliers/Customers.** During my employment with the Company and after termination of my employment, I will not directly or indirectly solicit or take away suppliers or customers of the Company if the identity of the supplier or customer or information about the supplier or customer relationship is a trade secret or is otherwise deemed confidential information within the meaning of California law.

14. **Name & Likeness Rights.** I hereby authorize the Company to use, reuse, and to grant others the right to use and reuse, my name, photograph, likeness (including caricature), voice, and biographical information, and any reproduction or simulation thereof, in any form of media or technology now known or hereafter developed (including, but not limited to, film, video and digital or other electronic media), both during and after my employment, for whatever purposes the Company deems necessary.

15. **Injunctive Relief.** I understand that in the event of a breach or threatened breach of this Agreement by me the Company may suffer irreparable harm and will therefore be entitled to injunctive relief to enforce this Agreement.

16. **Governing Law; Severability.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by any court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such provision will be enforced to the maximum extent possible given the intent of the parties hereto. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together shall constitute one and the same agreement.

18. **Entire Agreement.** This Agreement and the documents referred to herein constitute the entire agreement and understanding of the parties with respect to the subject matter of this Agreement, and supersede all prior understandings and agreements, whether oral or written, between or among the parties hereto with respect to the specific subject matter hereof.

19. **Amendment and Waivers.** This Agreement may be amended only by a written agreement executed by each of the parties hereto. No amendment of or waiver of, or modification of any obligation under this Agreement will be enforceable unless set forth in a writing signed by the party against which enforcement is sought. Any amendment effected in accordance with this section will be binding upon all parties hereto and each of their respective successors and assigns. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. No waiver granted under this Agreement as to any one provision herein shall constitute a subsequent waiver of such provision or of any other provision herein, nor shall it constitute the waiver of any performance other than the actual performance specifically waived.

20. **Successors and Assigns; Assignment.** Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives. The Company may assign any of its rights and obligations under this Agreement. No other party to this Agreement may assign, whether voluntarily or by operation of law, any of its rights and obligations under this Agreement, except with the prior written consent of the Company.

21. **Further Assurances.** The parties agree to execute such further documents and instruments and to take such further actions as may be reasonably necessary to carry out the purposes and intent of this Agreement.

22. **"At Will" Employment.** I understand that this Agreement does not constitute a contract of employment or obligate the Company to employ me for any stated period of time. I understand that I am an "at will" employee of the Company and that my employment can be terminated at any time, with or without notice and with or without cause, for any reason or for no reason, by either the Company or myself. I acknowledge that any statements or representations to the contrary are ineffective, unless put into a writing signed by the Company. I further acknowledge that my participation in any stock option or benefit program is not to be construed as any assurance of continuing employment for any particular period of time.

This Agreement shall be effective as of the first day of my employment by the Company, which is November 21, 2002.

XHP Microsystems, Inc.:

Employee:

Shaohar Pan

By:

Pan

Signature

Pan

Name:

SHAOKER PAN

Name (Please Print)

SHAOKER PAN

Title:

President & CEO



FENWICK & WEST LLP

EXHIBIT C

MICHELLE K. LEE
EMAIL MLEE@FENWICK.COM
DIRECT DIAL 650.335.7965

November 12, 2003

VIA FEDERAL EXPRESS

Dr. Shaoher Pan
1133 Kelez Drive
San Jose, CA 95120

RE: New U.S. Patent Application (Continuation of 10/378,056)
Title: REFLECTIVE SPATIAL LIGHT MODULATOR
Inventors: Shaoher X. Pan, Dongmin Chen, Xiao Yang
and Shoucheng Zhang
Our Ref.: 23340-08599

New U.S. Patent Application (Continuation of 10/378,041)
Title: FABRICATION OF A REFLECTIVE SPATIAL
LIGHT MODULATOR
Inventors: Shaoher X. Pan, Dongmin Chen and Xiao
Yang
Our Ref.: 23340-08600

New U.S. Patent Application (Continuation of 10/378,058)
Title: ARCHITECTURE OF A REFLECTIVE SPATIAL
LIGHT MODULATOR
Inventors: Shaoher X. Pan, Dongmin Chen, Xiao Yang
and Shoucheng Zhang
Our Ref.: 23340-08598

Dear Shaoher:

Consistent with the continuing prosecution of the subject matter of the following applications, each filed on February 27, 2003,

- a. U.S. Patent Application No.: 10/378,056, Title: REFLECTIVE SPATIAL LIGHT MODULATOR, Our Ref.: 23340-07025.
- b. U.S. Patent Application No.: 10/378,041, Title: FABRICATION OF A REFLECTIVE SPATIAL LIGHT MODULATOR, Our Ref.: 23340-07026.
- c. U.S. Patent Application No.: 10/378,058, Title: ARCHITECTURE OF A REFLECTIVE SPATIAL LIGHT MODULATOR, Our Ref.: 23340-07027.

Silicon Valley Center
801 California Street
Mountain View, CA 94041

Tel 650.988.8500
Fax 650.938.5200

www.fenwick.com

Silicon Valley • San Francisco • Washington, DC

23340/01000/DOCS/1389556.1

XHP Microsystems, Inc. has decided to file a continuation application in each of the applications referenced in a-c above. In support of these continuation applications, we need you to sign the following enclosed documents:

1. Combined Declaration and Power of Attorney for case number 08599 (continuation of case number 07025).
2. Combined Declaration and Power of Attorney for case number 08600 (continuation of case number 07026).
3. Combined Declaration and Power of Attorney for case number 08598 (continuation of case number 07027).
4. Assignment for case number 08599 (continuation of case number 07025).
5. Assignment for case number 08600 (continuation of case number 07026).
6. Assignment for case number 08598 (continuation of case number 07027).

In addition, we need your signature on the following document in connection with the Taiwan patent application for case number 0726.

1. Oath & Assignment.

Once the above listed items have been executed, please return them to me in the enclosed federal express envelope no later than **November 19, 2003**, so that I might timely file them with the U.S. Patent and Trademark Office. If I do not receive signed copies of the enclosed documents by November 19, 2003, I will assume you are unable or unwilling to sign the enclosed documents and will proceed accordingly.

Enclosed for your reference and convenience are copies of the following:

1. A copy of the continuation patent application for case number 08599 to be filed.
2. A copy of the continuation patent application for case number 08600 to be filed.
3. A copy of the continuation patent application for case number 08598 to be filed.

Dr. Shaoher Pan
November 12, 2003
Page 3

Please be reminded that, pursuant to the Employee Invention Assignment and Confidentiality Agreement ("the Agreement") you signed as an employee of XHP Microsystems, Inc. on November 21, 2002, and under California law, you continue to be obligated to maintain the confidentiality of XHP Microsystems, Inc.'s confidential and proprietary information, including the contents of the above-referenced patent applications.

Please do not hesitate to contact me if you have any questions. My contact information is noted above. Thank you for getting these documents back to me by November 19.

Sincerely,
FENWICK & WEST LLP



Michelle K. Lee

MKL/nm
enclosures



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12/1/2003

Dear Customer:

Here is the proof of delivery for the shipment with tracking number 839125928750. Our records reflect the following information.

Delivery Information:

Signed For By: C.PAN



Delivery Location: 1133 KELEZ DR
Delivery Date: November 13, 2003
Delivery Time: 1029

Shipping Information:

Tracking No: 839125928750

Ship Date: November 12, 2003

Recipient:

DR SHAOHER PAN

1133 KELER DRIVE
SAN JOSE, CA 95120
US

Shipper:

MICHELLE K LEE
FENWICK & WEST LLP **TOP ACCT
801 CALIFORNIA ST
MOUNTAIN VIEW, CA 94041
US

Shipment Reference Information:

23340-08599

Thank you for choosing FedEx Express. We look forward to working with you in the future.

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Jennifer Johnson

From: Greg Sueoka
Sent: Monday, December 01, 2003 10:05 AM
To: Jennifer Johnson
Subject: FW: Responds to your letter of November 12

Jennifer,
FYI.
Lets try to file the continuation by this Friday.
Greg

Greg T. Sueoka
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041-2008
Direct: 650-335-7194
Main: 650-988-8500
Fax: 650-938-5200
<<http://www.fenwick.com>>

-----Original Message-----

From: Michelle Lee
Sent: Sunday, November 30, 2003 7:31 PM
To: Greg Sueoka
Subject: FW: Responds to your letter of November 12

Greg,

Following up on your email to me, the only responses Shaoher has sent to me regarding my requests to him to sign declarations for the continuation applications and to sign an oath for application 7026 are shown below. It would probably be a good idea to follow up with his IP counsel since I take it we have not heard back from Shaoher or his IP counsel?

--Michelle

-----Original Message-----

From: Michelle Lee
Sent: Fri 11/21/2003 5:55 PM
To: 'Shaoher Pan'
Cc: Dennis Debroeck; Greg Sueoka
Subject: RE: Responds to your letter of November 12

Dear Shaoher,

Thank you for your follow-up email. Since you are now represented by counsel, we cannot communicate with you directly. I note that Greg Sueoka had a discussion with your counsel, John Ferrell, yesterday regarding the

1/6/2004

continuation applications and your declaration. Moreover, please refer all patent related matters and correspondence for XHP to Greg Sueoka, as I will be pursuing a new opportunity and will no longer be with the firm after the first week of December.

Best regards,
--Michelle

Michelle K. Lee
Partner, Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, California 94041
Ph. (650) 335-7965
Fax (650) 938-5200
Email: mlee@fenwick.com
URL: <http://www.fenwick.com>

-----Original Message-----

From: Shaoher Pan [<mailto:xpan95120@yahoo.com>]
Sent: Wednesday, November 19, 2003 5:17 PM
To: Michelle Lee
Cc: Dennis Debroeck; xpan95120@yahoo.com
Subject: Responds to your letter of November 12

Dear Michelle,

This communication follows your letter of November 12, my email of November 13, and your reply of November 18. I am requesting clarification on the request in your emails to me.

You are asking me to sign declarations in connection with continuation patent applications. As you may know, I do not have a copy of the patent applications or related file materials for reference because I left those materials at the company. It is my recollection that I am the sole inventor on each of the parent patent applications to which the new continuation patent application will claim priority, and that I am the sole inventor of all of the subject matter disclosed in the parent patent applications. It is possible that a review of the patent materials may clarify my recollection. I am also prepared to consider any information the company wishes to provide regarding the alleged contributions of the co-inventors who have been added to your continuation application.

Without such information, however, I do not see any basis for adding inventors to subject matter that I

1/6/2004

believe I alone invented. I am willing to cooperate, but I need to understand the basis for adding inventors to patent application in which you previously determined that I was the sole inventor. Should you proceed in this endeavor without my approval, I trust that you will report to the Patent Office that it is my position that I am the only inventor of the subject matter in the continuation patent applications.

Please let me know if you have any questions.

Shaoher

(408) 268-0702

--- Michelle Lee <MLee@fenwick.com> wrote:

>
> Dear Shaoher,
>
> Thank you for your email.
>
> We regard XHP Microsystem's patent strategy as
> confidential information of the company and, hence,
> are not in a position to disclose.
>
> With respect to the declarations I sent to you, the
> statute simply requires that the named inventor(s),
> including yourself, declare that they are the
> original and first inventor(s) of the claimed
> subject matter for which a patent is sought.
>
> Thank you for your cooperation.
>
> Best regards,
> --Michelle

>
> -----Original Message-----
> From: Shaoher Pan [<mailto:xpan95120@yahoo.com>]
> Sent: Thu 11/13/2003 11:36 AM
> To: Michelle Lee
> Cc: Dennis Debroeck; xpan95120@yahoo.com
> Subject: Time of New Invention

>
>
> Michelle,
>
> I just received your package of new US patent
> application dated November 12, 2003. I would

> like to explore the basis for this action.
>
> I formally request that you provide to me a list of
>
> inventions made by each of new authurs that are
> included in the three new US patent application, as
>
> well as the time when each of them made those
> inventions.
>
> I look forward to hearing from you.
>
> Best,
>
> Shaoher Pan
>
> 1133 Kelez Drive,
>
> San Jose, CA 95120
>
> (408) 268-0702
>
>
> ATTENTION
> The information contained in this message may be
> legally privileged
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> the individual
> or entity to whom it is addressed or by their
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> If you have received this message in error, please
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Cooley Godward LLP

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FREDERICK D. BARON
(650) 843-5020
fbaron@cooley.com

November 25, 2003

VIA FACSIMILE AND MESSENGER

Mr. Darryl Woo
Fenwick & West LLP
801 California Street
Mountain View, CA 94041

**CONFIDENTIAL/INADMISSIBLE –
SETTLEMENT PURPOSES ONLY**

Re: XHP Microsystems – Dr. Shaoher Pan

Dear Darryl:

On behalf of our client, Dr. Shaoher Pan, I am writing in response to your letter of November 14, 2003, regarding the proprietary information of XHP Microsystems, Inc. ("XHP") and other matters related to the employment separation of Dr. Pan. This response is for settlement purposes only and it is inadmissible in any legal proceeding.

1. Proprietary Information and Inventions Issues.

First, your letter sought to remind Dr. Pan of his obligations under his Employee Invention Assignment and Confidentiality Agreement (the "Confidentiality Agreement") and to ensure his compliance with that agreement. There is no problem in this regard. Dr. Pan is committed to abide by all of his lawful obligations under the Confidentiality Agreement, and he is in full compliance with them.

For example, to the best of Dr. Pan's knowledge, he is not in possession of any XHP property, documents, or materials, or any embodiments of XHP's proprietary information. His company laptop computer was returned in late August, 2003. Following his employment at XHP, Dr. Pan received from Fenwick & West, three draft continuation patent applications. He has separately responded to Michelle Lee at Fenwick & West with regard to those applications, and he is returning herewith his only copies of them. It is worth noting that when Dr. Pan was summarily escorted from XHP without warning on August 19, 2003 (prior to his formal termination on August 22, 2003), he was not afforded the opportunity to retrieve his personal property, which is still in the possession of XHP.

Dr. Pan has, in fact, disclosed to XHP all inventions that he made, conceived, or first reduced to practice during his employment at XHP. He will continue to assist XHP in every proper way to obtain and protect its intellectual property rights as provided in Section 6 of the Confidentiality Agreement. Dr. Pan will also refrain from using or disclosing the proprietary information of XHP as required by Sections 7 and 8 of the Confidentiality Agreement.

Cooley Godward LLP

Your letter alleged that Dr. Pan possessed certain "undocumented inventions" belonging to XHP. This allegation is untrue. Dr. Pan does not possess any such inventions, nor did he inform anyone that he did. In his first meeting with Mark Stevens and Ajit Shah to discuss possible future roles for him at XHP after his termination, Dr. Pan was asked to submit any undocumented XHP inventions. This meeting took place after the August board meeting. Dr. Pan did not submit any undocumented inventions because no such inventions existed.

After the termination of his employment (the last active day of which was August 19, 2003, when he was placed on "administrative leave," and the formal termination of which was on August 22, 2003), Dr. Pan sent an e-mail (attached as an appendix hereto) on August 27, 2003, to both Mark Stevens and Ajit Shah as a follow-up to discussions he had with them about transitioning to a new role at the Company. In the email, Dr. Pan listed a set of well-known problems in the micro-electro mechanical systems ("MEMS") industry that would be interesting areas to explore for future technical development. Each item on the list represented a broad scientific and engineering problem area well known as a current challenge in the MEMS industry. However, the email did not indicate that Dr. Pan had made technical developments in those areas while he was employed at XHP. Rather, Dr. Pan was clearly communicating his interest in working on those challenges from that point forward, either independently or as an employee of XHP, if a reinstatement could be negotiated.

In two separate conversations, one in the beginning of September, and the other in the first week of October, Worldview associate Steve Eglash told Dr. Pan that Ajit Shah was expecting information on "undocumented inventions" by Dr. Pan. On both occasions, Dr. Pan asked Eglash to explain that Dr. Pan had not developed any undocumented inventions prior to his departure from XHP, but if XHP were to allow Dr. Pan to continue working for XHP, he would attempt to invent technology in the areas that he had outlined in the email. Both times Eglash promised to convey the message. In October, Eglash also told Dr. Pan that the XHP investor board members were considering making an offer to Dr. Pan to return to XHP. In the October conversation, Dr. Pan informed Eglash that, following his termination, he had used his free time to develop new inventions, utilizing his general know-how and expertise, and not making any use of XHP proprietary information. Dr. Pan expressed his hope that the XHP investors would allow him to return to XHP as an employee so that XHP could benefit from his independent efforts at innovation.

At present, however, Dr. Pan has not been re-employed by XHP. He does not possess any XHP inventions that were not previously disclosed to XHP. And, XHP cannot lawfully act to interfere with Dr. Pan's prospective economic advantage by asserting unfounded claims to any inventions he may develop following his employment at XHP. Dr. Pan will comply with his inventions obligations under the Confidentiality Agreement, but XHP cannot prevent him from pursuing a livelihood by means of his well established expertise and inventive capabilities in his field, in which he has extensive original publications and patents, independent of his work at XHP.

Cooley Godward LLP

2. Expense Reimbursement and Other Financial Issues.

Your letter raises several questions regarding expenses incurred by Dr. Pan and other financial matters related to XHP. Set forth below are Dr. Pan's responses on all of these matters.

(a) **Citibank Funds.** Your letter indicates that Dr. Pan attempted a transfer of \$3 million from XHP's CitiBank account on August 22. Dr. Pan acknowledges that he inquired as to the possibility of such a transfer, but he did not believe it improper. He simply inquired with CitiBank about whether he could make the transfer to XHP's Silicon Valley Bank account on August 20, while he was still employed at XHP and still the Treasurer of the company as far as he knew. Dr. Pan did not believe that the board had acted lawfully in notifying him that it planned to terminate his employment at XHP. He considered the transfer of funds to another XHP account because he believed he had a duty to protect XHP assets while he consulted attorneys about the board's actions. In fact, no funds were transferred and Dr. Pan still has serious questions about the lawfulness of the purported board actions at the August, 2003 board of directors meeting, because a duly elected board member, James Wei, was not present, and one of his venture capital partners, Ajit Shah, acted on his behalf. Dr. Pan did not believe that Mr. Shah had the authority to do so, and still does not believe that the termination was lawful.

(b) **Expense Withdrawals.** Dr. Pan made two withdrawals, each in the amount of \$1,000, from XHP accounts on August 19, 2003. These withdrawals were for payment of his unreimbursed cash expenditures and credit card charges for XHP business expenses in July and August, prior to his termination, and for a pre-scheduled business trip the following week to TSMC in Taiwan. (Again, at that time, Dr. Pan believed that his termination was improper and that he had a duty to continue to act on behalf of XHP.) Also on August 19, Dr. Pan informed the Company's controller about the withdrawal of these advances and he was told to submit receipts after obtaining access to his office. As of this date, Dr. Pan has not been allowed access to his office and all of his expense receipts are in his office. To avoid any unnecessary dispute, Dr. Pan is reimbursing the \$2,000 amount by a personal check enclosed herewith. Nonetheless, Dr. Pan is entitled to receive reimbursement for the July and August charges upon the Company's review of his expense receipts, which should be done promptly.

(c) **Office Lease.** After the closing of the Series A funding for XHP, Dr. Pan started looking for a permanent office for XHP. Realizing that it would take several months to find and prepare a permanent new office, Dr. Pan signed a rental agreement for temporary office space at 1135 Kelez Drive in San Jose, with the property manager, his mother Shuying Li. XHP was already using the office space at that same address, which was being contributed on an in-kind basis due to the family relationship. That contribution was never reimbursed after the Series A financing. Since the Company needed a flexible lease without an early termination penalty, it would have been difficult for Dr. Pan to find an office in a convenient location in Silicon Valley that would meet XHP's needs. As an active California real estate broker, Dr. Pan believed that a monthly rent of \$6,000 was reasonable and that, because of his relationship with Shuying Li, he was, in fact, receiving more favorable terms than were generally commercially available. When Dr. Pan was recruiting Dr. Dongmin Chen to become the Company's full time VP of Engineering, XHP promised that the Company would pay Dr. Chen's first month of rent when he relocated from Boston after the Series A closing. Dr. Chen was able to live in the same space that Dr. Pan had leased as temporary offices. Dr. Pan explained the temporary lease situation at

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the first board meeting after entering the temporary lease, and he did not receive any objections. The board approved the monthly rental expenses at subsequent board meetings. All of the rental checks questioned in your letter were paid in the ordinary course of this leasing agreement.

(d) **Cash Advances.** The three "cash advance" payments referenced in your letter, totaling \$20,000, were for reimbursement of Dr. Pan's out of pocket expenditures for XHP business purposes. During the Company's early period, when the financial credit of XHP was not established, XHP relied heavily on the personal credit and expenditures of senior managers to do Company business expeditiously. XHP's practice was to reimburse managers by means of cash advances so that they could maintain their personal credit. The three checks totaling \$20,000 were for reimbursement of out-of-pocket expenditures by Dr. Pan for which he timely submitted receipts to the Company controller. At every board meeting over which Dr. Pan presided until his termination in August 2003, the board unanimously approved every spending report. Moreover, Dr. Pan was commended for managing the company's cash position.

3. Demands for XHP

(a) **Termination Authority.** Dr. Pan demands evidence and legal authority from XHP that Ajit Shah had authority to vote to terminate Dr. Pan at the August board meeting when he was not a duly elected board member. In the absence of such authority, Dr. Pan should be reinstated as CEO.

(b) **Technology Transfer.** In the Assignment of Technology Agreement that Dr. Pan executed with the Company as of November, 2002, Dr. Pan transferred his interest in the Technology (as defined therein) in exchange for the Company's issuance of 5.5 million shares. In Dr. Pan's view, a majority of those shares have now been purportedly repurchased by the Company due to his improper termination. Thus it is his position that he has been deprived of the consideration for the technology transfer, which is now invalid. Dr. Pan seeks reinstatement to his position at the Company, which will permit his continued vesting and remedy this problem.

(c) **Reimbursement of Expenditures.** Dr. Pan and his family spent hundreds of thousands of dollars of personal capital and in-kind contributions in building XHP before the Series A closing. Dr. Pan requested reimbursement of these expenditures and as of this date, he has not received such reimbursement. He requests a commitment by the Company to make this reimbursement (as well as reimbursement for subsequent unreimbursed business expenses) and to allow him access to his records that are at the Company so that he can prepare a specific submission for reimbursement.

(d) **Inspection and Production of Employment Records.** Dr. Pan requests prompt production by the Company of a copy of all agreements he has signed with the Company, and a prompt arrangement to inspect all personnel records pertaining to him at the Company, as permitted by statute.

(e) **Assurance Regarding Duties to Shareholders.** Dr. Pan request an assurance from the XHP board that it will adhere to its ongoing fiduciary duty to act in the best interests of all shareholders, including Dr. Pan who is the largest common stock shareholder of XHP.

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* * *

This letter has addressed all of the issues raised in your November 14, 2003 letter. If you have additional questions, please do not hesitate to contact me. While Dr. Pan has made several demands upon XHP in this letter, he reserves the right to assert other claims and demands as we analyze the past events at XHP.

Dr. Pan remains willing to consider consulting with XHP on some basis other than reinstatement, in order to help XHP develop its technology, but only if this can be done as part of a mutually acceptable separation and release agreement.

Sincerely,

Cooley Godward LLP



Frederick D. Baron

Enclosures

cc: Shaoher Pan

APPENDIX

E-mail from Shaoher Pan on August 27, 2003.

Dear Mark and Ajit,

Let me first thank you and Steve for taking the time to meet with me. I accept that it is time for me to transition to another role in the company. I am extremely concerned about the future of XHP and, despite all that has happened, wish to continue to contribute to its success.

We can discuss the specifics of what role makes sense. I propose that I become an individual contributor, such as Chief Technology Officer, for the reasons and with the specific duties and expectations discussed below.

I would also propose that I commit to certain concrete actions to demonstrate my commitment to XHP's success. As a start, I suggest that we have a meeting with all employees. With the full board present, I would explain to the employees why it is time to bring in a new management team, and ask for everyone's cooperation to support the new management team for a smooth transition. I believe that this meeting is necessary to reassure the number of executives and employees who are currently alarmed about the company's future. I believe smooth transitions are best for morale and stability (internally as well as in the market).

The other actions are the following:

1. Build the XHP patent portfolio

I know that I will continue to develop many innovative ideas, whether at XHP or elsewhere. If still part of XHP, I can continue this development work for the company's benefit, whether at home or on the company's premises. I believe that one of the greatest long-term assets of XHP is its burgeoning intellectual property assets. Followings are some of the patents I like to spend sometime to work on immediately:

- Unique dual layer etching process for micro-display;
- Integrated micro-display manufacturing process without micron level alignment;
- Two steps processes for fabricating hidden hinge micro-display;
- Precision mechanical stop for micro-display;
- Plasma induced stiction reduction for silicon-silicon and silicon-nitride interfaces;
- Wafer-level-chip-scale packaging for hidden hinge micro-display.

2. Travel to vendors and customers

I would like to travel when requested to vendors' and customers' sites to promote XHP technology, resolve the engineering issues, and listen to customer feedback. I believe that my presence as the CTO would add a measure of comfort from a technology standpoint.

3. Help market XHP to the industry

I believe that I can help establish mark t credibility for XHP among the industry l aders. In addition to the experience described below, which involved working with every major foundry, I was elected and continue to hold the position of Secretary of the Bay Area Society of Information Display (SID), the largest professional organization in our field.

4. Assist the company in its technology challenges

I want to spend some time on this item, as it is the most critical for the company's future. XHP is still in a very early stage of product development. Micro-mirror displays are extremely complex opto micromecahnical devices that require integrated efforts from many disciplines, especially in the unproven areas of micro-mirror array fabrication, stiction reduction, and packaging.

To fabricate the micro-display, one first needs to do plasma etching, then plasma activated bonding, and finally plasma etching again to release the mirror. As the first micro-display is fabricated, it will certainly encounter stiction problems. Many solutions exist, including using plasma induced stiction reduction method to improve the yields. XHP's micro-mirror will also require a special type of wafer-level chip-scale packaging that requires further development.

We only started to develop preliminary high-level plans and solutions to address these high-risk areas. Our job is not yet done and I would be remiss in my duties as a board member if I did not alert you to the difficulties the company faces in these areas. To address these areas and effectively work with an established foundry, we must maintain our core technical expertise. Otherwise, we risk losing much of our intellectual property rights and company value through disadvantageous joint development agreements with larger foundries.

I am uniquely qualified to help XHP resolve these problems. I was trained as a plasma physicist during my Ph.D. education. After working at the University of Pennsylvania and IBM Research, I focused on plasma applications. For example, I worked on plasma treatment for stiction reduction with Professor David Bogoy and built the first Micro-stiction Lab for MEMS and Hard disk application at U.C. Berkeley - a lab that is still in use today to study mechanical stiction and to publish papers.

After I began to focus on plasma applications in semiconductor manufacturing, I led the engineering teams that built the current standard DPS etch tools installed in TSMC Fab 7. I have published more than 50 papers in the international journals, and have almost 20 patents granted on technologies related to the above. I have given seminars in almost every large foundry on semiconductor process developments.

My point in these last few paragraphs is to remind us that XHP is still a young startup that faces significant technology risks. I believe in XHP and its technology, which is why I committed all my efforts to this project. I still have more to contribute and, absent the technical guidance I can offer, I fear that XHP may not realize its potential.

I assume that the primary fear you have is whether we can continue to work together after what happened last week. It is certainly true that have much trust to regain. However, I will commit myself to assisting the rest of the board, the new management team, and the company in its continued success. I

have tangible, concrete skills to offer, and believe that XHP would gain dramatically by my continued efforts.

To continue my contributions to XHP, as described above, I request that the board reinstate my employment, with a change of title from CEO to an individual contributor, such as CTO, so that my employment with the company is uninterrupted. I know that we discussed today my taking a number of weeks away from the company. If necessary, I am willing to do this as paid leave.

I hope the board realizes my value and lets me have an opportunity to contribute to the success of XHP.

I look forward to hearing from you.

Shaoher Pan

Home: (408) 927-6185

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M. Beller**FAX**

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FAX (650) 849-7400

DATE: November 25, 2003

PLEASE DELIVER TO:	PHONE No.:	FAX No.:
Darryl Woo	(650) 988-8500	(650) 938-5200

FROM: Frederick D. Baron

PHONE: (650) 843-5020

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RE:

NUMBER OF PAGES, INCLUDING COVER PAGE: 9	Client Number: 268888-888
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MESSAGE:

Darryl,
The enclosures will be sent via messenger tomorrow.

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FENWICK & WEST LLP

December 18, 2003

GREG T. SUEOKA

EMAIL GSUEOKA@FENWICK.COM
DIRECT DIAL 650.335.7194Mr. Frederick D. Baron, Esq.
Cooley Godward LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155

Re: XHP Microsystems Patent Continuation Applications – Shaoher Pan

Dear Frederick:

Thank you for your letter dated November 25, 2003, addressed to my partner, Darryl Woo. As you may know, I am outside counsel for XHP Microsystems (the "Company") with respect to its patent applications, and wish to address that aspect of your letter. Mr. Woo will be responding separately with respect to the other portions of your letter.

At the outset, we understand that you and your firm are representing Shaoher Pan, and that he is not represented by John Ferrell or his firm on patent matters or otherwise. Accordingly, we will continue to address communications concerning Dr. Pan's continuing obligations with respect to the Company's pending patent applications through you. If you would like us to correspond directly with him on that specific topic, however, please so indicate in writing.

Your letter in part returned what you represented as Dr. Pan's only copies of three patent continuation applications that respectively claim priority from U.S. Patent Application Nos. 10/378,041; 10/378,056; and 10/378,058. We received these back unsigned, and we gather from that purposeful act and your letter that Dr. Pan is refusing to sign them.

As indicated at the top of this letter, Mr. Woo will address the other points of your November 25 letter in separate correspondence.

Sincerely,

FENWICK & WEST LLP


Greg T. Sueoka

cc: Darryl Woo

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Shaoher X. Pan, Xiao Yang and Dongmin Chen
APPLICATION NO.: Unassigned
FILING DATE: Herewith
TITLE: Fabrication of a Reflective Spatial Light Modulator
EXAMINER: Unknown
GROUP ART UNIT: Unknown
ATTY. DKT. NO.: 23340-08598

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Patent Application, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below:

Dated: 1/13, 2004

By: 

Jennifer R. Johnson, Reg. No. 50,784

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STATEMENT ESTABLISHING PROPRIETARY INTEREST BY PERSON

SIGNING ON BEHALF OF NONSIGNING INVENTOR

I, Dongmin Chen, residing at 15 Stone Road, Belmont, MA, 02478, am the person signing the declaration on the above-identified application on behalf of the nonsigning inventor, Shaoher X. Pan (hereinafter "Mr. Pan") and make this statement as to the facts establishing my proprietary interest.

1. As of the date I signed the declaration for this application, the proprietary interest in this invention:

☐ belonged to me.

☒ belonged to the following juristic person:

Miradia, Inc.
2880 Lakeside Drive, Suite 260
Santa Clara, CA 95054

and I am authorized to sign the statement on behalf of the juristic person, my title being Director of Microsystems Technology.

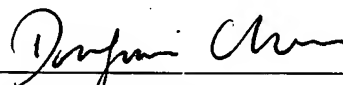
2. I establish the proprietary interest by

☐ attaching a copy of the assignment of this invention by the nonsigning inventor.

☒ attaching a copy of the agreement whereby the nonsigning inventor agreed to assign this invention.

3. In accordance with 37 C.F.R. § 3.73, the assignee hereby states that the evidentiary documents with respect to its ownership have been reviewed and that, to the best of assignee's knowledge and belief, title is in the assignee seeking to take this action.

Dated: 119, 2004

By: 
Dongmin Chen
VP of Engineering and CFO
Miradia, Inc.
2880 Lakeside Drive, Suite 260
Santa Clara, CA 95054